

AMENDED IN ASSEMBLY JUNE 7, 2010  
AMENDED IN SENATE JANUARY 20, 2010  
AMENDED IN SENATE DECEMBER 15, 2009  
AMENDED IN SENATE MAY 6, 2009  
AMENDED IN SENATE MARCH 31, 2009

**SENATE BILL**

**No. 650**

**Introduced by Senator Yee**  
(Coauthor: Assembly Member Portantino)

February 27, 2009

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An act to amend ~~Sections 8547.10 and 8547.12~~ *Section 8547.10* of the Government Code, relating to improper governmental activities.

LEGISLATIVE COUNSEL'S DIGEST

SB 650, as amended, Yee. Disclosure of improper governmental activities: ~~state colleges and universities: damages.~~

Existing law, the California Whistleblower Protection Act, authorizes a California State University or ~~University of California~~ employee or applicant for employment to have an available action for damages caused by intentional acts of reprisal, retaliation, threats, or coercion ~~only under a specified conditions procedure.~~

This bill would ~~also~~ authorize an available action for damages or other legal remedies arising on or after January 1, 2011, ~~once a complaint is filed with a specified university officer, if the California State University or University of California either reached a decision, or failed, within time limits established by the trustees or regents, respectively, to reach a decision regarding the complaint.~~ This bill would state that these provisions are not intended to prohibit an injured party

~~from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months for a University of California employee or applicant for employment under the same procedure.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8547.10 of the Government Code is  
2 amended to read:

3 8547.10. (a) A University of California employee, including  
4 an officer or faculty member, or applicant for employment may  
5 file a written complaint with his or her supervisor or manager, or  
6 with any other university officer designated for that purpose by  
7 the regents, alleging actual or attempted acts of reprisal, retaliation,  
8 threats, coercion, or similar improper acts for having made a  
9 protected disclosure, together with a sworn statement that the  
10 contents of the written complaint are true, or are believed by the  
11 affiant to be true, under penalty of perjury. The complaint shall be  
12 filed within 12 months of the most recent act of reprisal complained  
13 about.

14 (b) Any person who intentionally engages in acts of reprisal,  
15 retaliation, threats, coercion, or similar acts against a University  
16 of California employee, including an officer or faculty member,  
17 or applicant for employment for having made a protected  
18 disclosure, is subject to a fine not to exceed ten thousand dollars  
19 (\$10,000) and imprisonment in the county jail for up to a period  
20 of one year. Any university employee, including an officer or  
21 faculty member, who intentionally engages in that conduct shall  
22 also be subject to discipline by the university.

23 (c) In addition to all other penalties provided by law, any person  
24 who intentionally engages in acts of reprisal, retaliation, threats,  
25 coercion, or similar acts against a university employee, including  
26 an officer or faculty member, or applicant for employment for  
27 having made a protected disclosure shall be liable in an action for  
28 damages brought against him or her by the injured party. Punitive  
29 damages may be awarded by the court where the acts of the  
30 offending party are proven to be malicious. Where liability has  
31 been established, the injured party shall also be entitled to  
32 reasonable attorney's fees as provided by law. ~~An action for~~

1 ~~damages shall be available to the injured party only if the injured~~  
2 ~~party has first filed a complaint with the university officer identified~~  
3 ~~pursuant to subdivision (a), and the university has either reached~~  
4 ~~a decision regarding the complaint, or failed, within the time limits~~  
5 ~~established by the regents, to reach a decision regarding the~~  
6 ~~complaint~~ *However, any action for damages shall not be available*  
7 *to the injured party unless the injured party has first filed a*  
8 *complaint with the university officer identified pursuant to*  
9 *subdivision (a), and the university has failed to reach a decision*  
10 *regarding that complaint within the time limits established for that*  
11 *purpose by the regents. Nothing in this section is intended to*  
12 *prohibit the injured party from seeking a remedy if the university*  
13 *has not satisfactorily addressed the complaint within 18 months.*

14 (d) This section is not intended to prevent a manager or  
15 supervisor from taking, directing others to take, recommending,  
16 or approving any personnel action or from taking or failing to take  
17 a personnel action with respect to any university employee,  
18 including an officer or faculty member, or applicant for  
19 employment if the manager or supervisor reasonably believes any  
20 action or inaction is justified on the basis of evidence separate and  
21 apart from the fact that the person has made a protected disclosure.

22 (e) In any civil action or administrative proceeding, once it has  
23 been demonstrated by a preponderance of the evidence that an  
24 activity protected by this article was a contributing factor in the  
25 alleged retaliation against a former, current, or prospective  
26 employee, the burden of proof shall be on the supervisor, manager,  
27 or appointing power to demonstrate by clear and convincing  
28 evidence that the alleged action would have occurred for legitimate,  
29 independent reasons even if the employee had not engaged in  
30 protected disclosures or refused an illegal order. If the supervisor,  
31 manager, or appointing power fails to meet this burden of proof  
32 in an adverse action against the employee in any administrative  
33 review, challenge, or adjudication in which retaliation has been  
34 demonstrated to be a contributing factor, the employee shall have  
35 a complete affirmative defense in the adverse action.

36 (f) Nothing in this article shall be deemed to diminish the rights,  
37 privileges, or remedies of any employee under any other federal  
38 or state law or under any employment contract or collective  
39 bargaining agreement.

1 SEC. 2.— Section 8547.12 of the Government Code is amended  
2 to read:

3 8547.12. (a) A California State University employee, including  
4 an officer or faculty member, or applicant for employment may  
5 file a written complaint with his or her supervisor or manager, or  
6 with any other university officer designated for that purpose by  
7 the trustees, alleging actual or attempted acts of reprisal, retaliation,  
8 threats, coercion, or similar improper acts for having made a  
9 protected disclosure, together with a sworn statement that the  
10 contents of the written complaint are true, or are believed by the  
11 affiant to be true, under penalty of perjury. The complaint shall be  
12 filed within 12 months of the most recent act of reprisal complained  
13 about.

14 (b) Any person who intentionally engages in acts of reprisal,  
15 retaliation, threats, coercion, or similar acts against a California  
16 State University employee, including an officer or faculty member,  
17 or applicant for employment for having made a protected  
18 disclosure, is subject to a fine not to exceed ten thousand dollars  
19 (\$10,000) and imprisonment in the county jail for up to a period  
20 of one year. Any university employee, including an officer or  
21 faculty member, who intentionally engages in that conduct shall  
22 also be subject to discipline by the university.

23 (c) In addition to all other penalties provided by law, any person  
24 who intentionally engages in acts of reprisal, retaliation, threats,  
25 coercion, or similar acts against a university employee, including  
26 an officer or faculty member, or applicant for employment for  
27 having made a protected disclosure shall be liable in an action for  
28 damages brought against him or her by the injured party. Punitive  
29 damages may be awarded by the court where the acts of the  
30 offending party are proven to be malicious. Where liability has  
31 been established, the injured party shall also be entitled to  
32 reasonable attorney's fees as provided by law. An action for  
33 damages shall be available to the injured party only if the injured  
34 party has first filed a complaint with the university officer identified  
35 pursuant to subdivision (a), and the university has either reached  
36 a decision regarding the complaint, or failed, within the time limits  
37 established by the trustees, to reach a decision regarding the  
38 complaint. Nothing in this section is intended to prohibit the injured  
39 party from seeking a remedy if the university has not satisfactorily  
40 addressed the complaint within 18 months.

1     ~~(d) This section is not intended to prevent a manager or~~  
2     ~~supervisor from taking, directing others to take, recommending,~~  
3     ~~or approving any personnel action, or from taking or failing to take~~  
4     ~~a personnel action with respect to any university employee,~~  
5     ~~including an officer or faculty member, or applicant for~~  
6     ~~employment if the manager or supervisor reasonably believes any~~  
7     ~~action or inaction is justified on the basis of evidence separate and~~  
8     ~~apart from the fact that the person has made a protected disclosure.~~

9     ~~(e) In any civil action or administrative proceeding, once it has~~  
10    ~~been demonstrated by a preponderance of the evidence that an~~  
11    ~~activity protected by this article was a contributing factor in the~~  
12    ~~alleged retaliation against a former, current, or prospective~~  
13    ~~employee, the burden of proof shall be on the supervisor, manager,~~  
14    ~~or appointing power to demonstrate by clear and convincing~~  
15    ~~evidence that the alleged action would have occurred for legitimate,~~  
16    ~~independent reasons even if the employee had not engaged in~~  
17    ~~protected disclosures or refused an illegal order. If the supervisor,~~  
18    ~~manager, or appointing power fails to meet this burden of proof~~  
19    ~~in an adverse action against the employee in any administrative~~  
20    ~~review, challenge, or adjudication in which retaliation has been~~  
21    ~~demonstrated to be a contributing factor, the employee shall have~~  
22    ~~a complete affirmative defense in the adverse action.~~

23    ~~(f) Nothing in this article shall be deemed to diminish the rights,~~  
24    ~~privileges, or remedies of any employee under any other federal~~  
25    ~~or state law or under any employment contract or collective~~  
26    ~~bargaining agreement.~~

27    ~~(g) If the provisions of this section are in conflict with the~~  
28    ~~provisions of a memorandum of understanding reached pursuant~~  
29    ~~to Chapter 12 (commencing with Section 3560) of Division 4 of~~  
30    ~~Title 1, the memorandum of understanding shall be controlling~~  
31    ~~without further legislative action.~~

32    ~~SEC. 3.~~

33    ~~SEC. 2.~~ This act shall only affect an action for damages or  
34    other legal remedies arising on or after January 1, 2011.